Supreme Court, U.S.
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NO. 86-342

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1986

SULOCHANA MANDHARE,
Petitioner

VERSUS

W. S. LAFARGUE ELEMENTARY SCHOOL, ET AL
Respondents

BRIEF ON BEHALF OF THE LAFOURCHE PARISH SCHOOL BOARD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Original unamended Complaint of Petitioner

STATEMENT OF THE CASE

This case involves a dispute between petitioner, Mrs. Sulochana Mandhare and the Lafourche Parish School Board. Mrs. Mandhare is of Asian origin. She was employed by the Lafourche Parish School Board as a librarian at the W.S. Lafargue Elementary School under a one year contract for the school year 1980-81. Plaintiff was not tenured.

The plaintiff's contract was not renewed for the next school year.

Plaintiff contended in her Complaint that although she was certified as a librarian she was not rehired by the Lafourche Parish School Board for the 1981-82 school year as an elementary school librarian and was intentionally discriminated against the Board solely because of her national origin.

Specifically, in her Complaint the plaintiff made the following allegations:

(1) Her primary job was to organize,

maintain and administer the library (at Par. 10);

(2) As a small part of her job according to her job description, she was asked to plan and present story hours for the children. This activity was to introduce and promote reading and diversify the school day for the children and to acquaint them with the library (at Par. II);

(3) During the time that she worked for the school system, the Principal, her immediate supervisor, never stated to her that she was not performing her duties as a librarian according to her job description (at Par. 12);

(4) As a newcomer to the Lafourche Parish School Board, she received very little information or instructions from her immediate supervisor (at Par. 13);

(5) She was also never evaluated by

fellow librarian...although evaluations are common and usually required for first year employees and requested by plaintiff (at Par. 13);

(6) At the end of 1981, she was terminated allegedly because she did not communicate well in English. According to her job description, a minor part of her job required oral communication to students (at Par. 14).

The School Board readily conceded that plaintiff had established a prima facie case of discrimination since she was obviously a member of a protected class, i.e., Asian, was qualified on paper to be a librarian, was not rehired and was replaced by a person not in a protected class.

However, the School Board contended it had a legitimate reason for not renewing Mrs. Mandhare's contract as librarian at W.S.

Lafargue, a school with grades kindergarten through second grade. Namely, she had a communication problem due to her heavy accent and speech patterns which prevented her from effectively communicating with the young children who were her students. At that age the librarian spends a large amount of time reading stories to the children or instructing the students in library skills. Thus, no one in a supervisory capacity responsible for observing or evaluating the performance of plaintiff--from the principal to the superintendent of schools--recommended her re-employment as a primary school librarian.

The superintendent ultimately recommended that a job of second librarian be created for plaintiff at a junior high school. No such position existed at the junior high school or any junior high school within the Lafourche Parish School system. Further, the superintendent's recommendation was due to a personal interest in petitioner.

The School Board did not renew plaintiff's elementary school contract for 1981-82 school year. In so acting the Board was motivated by the fact that plaintiff was not suited to act as a primary school librarian--the job she was originally contracted to perform. In fact, no one recommended her rehire at that position. As far as Superintendent's recommendation to appoint her to the position of junior high school librarian, the Board considered that there was no available librarianship at a junior high school to which plaintiff could be transferred. The Board did not feel it should create a position just for the plaintiff.

The School Board denied that discrimination based on national origin was the basis of the non-renewal of plaintiff's contract.

The trial judge found that the School Board's explanation of its motivation was "unworthy or credence". (See reasons for

Judgment, page 6). However, the trial judge erroneously and unexplainably attributed the Board'd explanation for not renewing her elementary school contract to the Board's action in not following the Superintendent's recommendation to appoint her as junior high school librarian.

As a result, the trial judge entered a judgment.

(1) Reinstating plaintiff as an employee of the School Board in the capacity of a librarian of a junior high school;

(2) Awarding attorney's fees of $13,885.88.

No back pay award was made.

The Lafourche Parish School Board appealed from that Judgment to the Fifth Circuit Court of Appeals.

The Fifth Circuit reversed. The Court found that the district court's ultimate determination was clearly erroneous. In so

doing, however, the Fifth Circuit did not tamper with the district court's underlying factual determinations; rather, it determined that the trial court focused on an issue not within the scope of the complaint or pre-trial order in making its ultimate finding of discrimination. Further, the Court of Appeals determined that based on the trial judge's findings, the evidence did not support the petitioner's allegations as set forth in her complaint.

SUMMARY OF ARGUMENT

The Fifth Circuit did not violate the parameters of Rule 52, Federal Rules of Civil Procedure in its reversal of the district judge's determination of the existence of discrimination.

The Court recognized that the District Court actually determined that there was no discrimination in the School Board's decision not to renew petitioner's contract as an elementary school librarian - which was the only issue to be decided in view of the unamended complaint and pre-trial order.

Further, the Court examined the Board's actions beyond the decision not to renew that contract, and found, based upon undisputed evidence, that there was no discrimination in those actions.

BRIEF IN OPPOSITION TO GRANTING OF WRIT

(1) The Court of Appeals did not substitute its own version of the facts for the findings of the trial court of otherwise violate Rule 52, Federal Rules of Civil Procedure.

In an overzealous effort to prove that the Fifth Circuit overstepped the bounds of proper judicial review petitioner first incorrectly summarizes her original Complaint by suggesting that the Complaint was "not limited to either the elementary or junior high librarian position but targeted to the fact she was not rehired".

Nothing could be further from the truth. We reproduce verbatim the relevant paragraphs of her Complaint, which is hereto attached:

> 7. Plaintiff, Sulochana Mandhare, is a resident of Lafourche Parish; she obtained her B.A. and B.Ed. in 1957 and 1964 respectively, in India and a masters of Education at Loyola University, New Orleans, Louisiana in 1972. She returned to school in 1978-79 and completed the necessary requirements to be granted certification as a schools librarian on September 6, 1979 at Nicholls State University.

8. Upon obtaining her certification as a librarian, plaintiff applied for and obtained employment at J.B. Maitland Elementary as a librarian in St. Mary Parish. She held that position for one year.

9. In 1980, plaintiff applied for a librarian's job with the Lafourche Parish School Board. She was hired for the 1980-81 school year and assigned to W.S. Lafargue Elementary School, a school in Lafourche Parish. The school consisted of grades kindergarten through second.

10. Plaintiff's primary job was to organize, maintain and administer the school's library. At the time she began work, that job was complicated as the school had recently added the second grade and this addition meant that the plaintiff was responsible for adding all the second grade books to the existing library as well as adding and cataloging all the audio/visual aids for the second grade. Plaintiff made orderly transition of the additional books and audio/visual aids adding them to the card-catalog and the accession record, opening the library on November 1, 1980 for the children.

11. As a small part of her job, according to her job description, plaintiff was

asked to plan and present story hours for the children. This activity was to introduce and promote reading and diversify the school day for the children and to acquaint them with the library.

12. During the time that plaintiff worked for the school system, the principal, her immediate supervisor, never stated to her that she was not performing her duties as a librarian according to her job description.

13. As a newcomer to the Lafourche Parish School Board, she received very little information or instruction from her immediate supervisor. She was also never evaluated from her immediate supervisor. She was also never evaluated by a fellow librarian, either in the first or second semester of employment, although evaluations are common and usually required for first year employees and requested by the plaintiff.

14. At the end of 1981, plaintiff was terminated allegedly because she did not communicate well in English. According to her job description, a minor part of her job required oral communication to students. Plaintiff alleges that defendant discriminated against her by denying her reappointment for the 1981-82

school year because of her national origin, Asian (India). (Emphasis supplied).

The trial centered completely on Mrs. Mandhare attempting to support her charges as alleged, and the School Board's defense of same.

Although not essential to a defense of such a claim, each and every allegation reproduced above was disproved by overwhelming and mostly uncontradicted evidence; to wit,

(1) In refutation of paragraphs 10, 11 and 12 of the Complaint, the Supervisor of School Libraries, State of Louisiana, as well as the Supervisor of Elementary Education for the defendant, as well as appellant's principal all testified that the ability to communicate verbally was a very important part of an elementary school librarian's job (only petitioner disputed this);

(2) In refutation of paragraph 12,

numerous observation forms and evaluation forms (and testimony in connection therewith including petitioner's own testimony) were introduced into evidence showing that her communication skills were called into question during the school year by her superiors;

(3) In refutation of paragraph 13, the Supervisor of School Libraries, State of Louisiana stated it was the practice throughout the state for principals to evaluate all teachers. There was no requirement that librarians evaluate librarians, etc. (All of the above refuted paragraph 14)

Although the appellant did produce two or three teachers who testified they had no trouble understanding appellant, the School Board produced evidence of numerous complaints to the principal that teachers and students

were having difficulty understanding her. (None of petitioner's witnesses challenged the good faith of respondent's witnesses).

Even one of petitioner's own witnesses, a former principal in another system, testified that he would have some hesitancy in recommending her because he himself had difficulty understanding her and knew that some teachers in his system had expressed the same sentiment.

The defendant School Board also introduced evidence as to how it handled the recommendation of appellant's principal not to rehire. That testimony was uncontroverted as follows:

Mrs. Mandhare's principal recommended that she not be rehired as an elementary school librarian. The Superintendent of Schools--purely out of compassion and mutual friendship--tried to help Mrs. Mandhare personally. He testified that he told her that she was not going to be rehired as an

elementary school librarian, "in spite of friendship". However, he told her that there may be a way to keep her employed in a position that did not require oral communication and teaching skills as did her previous position as a primary school librarian. Therefore, he told Mrs. Mandhare to request a transfer to a junior high school. He admonished her that there may not be a position available and that his plan to help her may not work. She agreed to the plan. The Superintendent subsequently recommended to the Lafourche Parish School Board that Mrs. Mandhare be rehired as a librarian at Est Thibodaux Junior High School. In fact, no position was available at that junior high school or at any other junior high school in the parish. In essence, the Superintendent recommended to the Board that a new position be created at that junior high school to accommodate Mrs. Mandhare. No other junior high school in the parish had a second

librarian. Although the School Board had always followed the Superintendent's personnel rehiring recommendations, he had never before recommended that the School Board create a job for someone. The Lafourche Parish School Board rejected the recommendation of Mr. LeBlanc and decided not to extend a new contract to Mrs. Mandara employing her as junior high school librarian.

The trial judge in his judgment implicitly recognized that appellant was not qualified to hold the position of elementary school librarian becase he did not order her reinstatement as such, and his ultimate finding of discrimination was in no way related to petitioner's stated complaint. In fact, the trial judge's Reasons for Judgment assumes the legitimacy of the Board's reasons for not renewing Mrs. Mandhare's contract as elementary school librarian:

> Defendant's contention that its legitimate reason for plaintiff's termination or non-appointment was that she had a communication problem

> because of her accent which prevented her from effectively communicating with primary school students is a feigned contention. Plaintiff was not being considered for a position which would require such communication. She was to be appointed librarian at a junior high school, a position for which it was established that she was eminently qualified.
>
> (Reasons at page 6)

The Court's holding of discrimination, unfortunately, was the epitome of fallacious reasoning. It set up a straw man easily knocked down to support its judgment.

In order to fully understand the illogic and patent unfairness of the trial judge's finding, one must remember that plaintiff's Complaint in its entirety, charged the School Board with discrimination based on the premise that she was qualified to serve as a primary school librarian. The Pre-Trial Order did not enlarge these allegations. The plaintiff produced witnesses in alleged support of this position.

Therefore, the Board was required to

articulate legitimate reasons to explain its action and defend itself against these contentions, i.e. present evidence of its observations and evaluations of plaintiff and her problems with verbal communication.

At no time did the School Board contend that Mrs. Mandhare was not extended a contract as a junior high school librarian solely because of her inability to communicate effectively in English with children in kindergarten through first grade. This was an entirely separate event.

The Superintendent's recommendation of Mrs. Mandhare's appointment to the junior high school was not approved by the Board because of the following undisputed facts: first, there was no opening for a librarian at the school; second, to employ her at the school would have entailed creation of a position solely for Mrs. Mandhare--and no junior high school in the system employed two librarians.

In its reversal, the Fifth Circuit did

not, as suggested by appellant, invade the district judge's domain of determining credibility of witnesses or substitute its own judgment on subsidiary fact findings. In fact, we suggest that the Fifth Circuit tampered with none of the district court's underlying factual determinations. The Court correctly held that the trial court's ultimate holding of discrimination was clearly erroneous, based on fallacious reasoning and involved consideration of issues not contained in the pleadings or Pre-Trial Order.

In holding that the record contained no proof that "the Board discriminated against Mandhare....in refusing to rehire her in the elementary school position....the Fifth Circuit was merely stating the obvious. The trial judge in his opinion implicitly recognized that fact. His opinion no where states that Mrs. Mandhare was qualified to be an elementary school librarian. It makes specific mention that the judgment was

premised on the fact that "Plaintiff was not being considered for a position which required such communication." The Fifth Circuit in effect held that the Court should have terminated its inquiry at this point, and not considered the Board's actions beyond this point.

> (2) Petitioner ultimately seeks a holding of this Court That where an Individual is qualified to perform a job and Applies for Employment, a job must be created to Employ the Individual.

In holding that there was "no proof that the Board discriminated against Mandhare...in refusing to create a new junior high school position for her" the Fifth Circuit against disturbed no underlying factual determination of the district judge.

The Court of Appeals simply recognized the patent error of the trial judge in making an ultimate finding of discrimination by misstating the contentions of the School Board and by suggesting that the reasons advanced by

the School Board to rebut petitioner's claim that she was qualified to be an elementary school librarian, i.e., poor communication skills, were the same reasons for the Board's decision not to extend her a contract as a junior high school librarian.

The Court of Appeal assumed Mrs. Mandhare would be qualified to hold the position of junior high school librarian, and, indeed, this fact was not contested at trial. Having assumed arguendo, Mrs. Mandhare's qualifications, the Court recognized these undisputed facts: First, there was no opening at the school recommended by the Superintendent. Second, the recommendation of the Superintendent would entail creation of a position of assistant librarian--a position which did not exist at that school or at any junior high in the system--just for Mrs. Mandhare. The Board had never before created a job for an individual at the request of the Superintendent.

The Court recognized in its holding that the Board was under no legal obligation to create a job for Mrs. Mandhare.

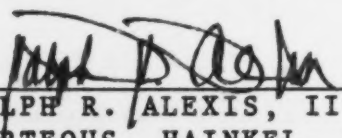
Indeed, petitioner seeks ultimately to have this Honorable Court issue an unprecedented holding; to wit, where a qualified person applies for a job--even if the job does not exist--a position must be created to employ the individual.

The Fifth Circuit acted properly in refusing to set such a precedent.

CONCLUSION

For the reasons set forth above, this Court should deny petitioner's Petition.

Respectfully submitted,



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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

SULOCHANA MANDHARE PLAINTIFF	*	CIVIL ACTION
VERSUS	*	NUMBER 83-[illegible]
W.S. LaFARGUE ELEMENTARY SCHOOL, THE LAFOURCHE PARISH SCHOOL BOARD AND THE PARISH OF LAFOURCHE DEFENDANTS	*	SECTION SECT. E MAG. [illegible]

* * * * * * * * * * * * * *

COMPLAINT

I.

1. This is a suit seeking redress for national origin discrimination in employment under the Civil Rights Act of 1964. This Court has jurisdiction under 42 U.S.C. §2000e-2(a)(1) and 28 U.S.C. §1331.

II.

PARTIES

2. Sulochana Mandhare is an adult female of Asian origin who has resided in the United States for 18 years. She is domiciled in Thibodaux, Louisiana. She was employed by the Lafourche Parish School Board as a librarian at the W.S. LaFargue Elementary School during the school year 1980-81.

$60.00

3. W.S. LaFargue Elementary School, defendant, is an elementary school serving grades kindergarten through second, it is within the Lafourche Parish School system, Lafourche Parish, Louisiana.

4. The Lafourche Parish School Board, defendant, is a school system who has direct jurisdiction over the W.S. LaFargue Elementary School, its principal and teachers.

5. The Parish of Lafourches, defendant, is, on information and belief, the employer of all teachers and principals in the Lafourche Parish School System.

6. Defendants employ more than 15 persons and are "employers" within the meaning of 42 U.S.C. §2000e(b).

STATEMENT OF FACTS

7. Plaintiff, Sulochana Mandhare, is a resident of Lafourche Parish; she obtained her B.A. and B.Ed. in 1957 and 1964 respectively, in India and a masters of Education at Loyola University, New Orleans, Louisiana in 1972. She returned to school in 1978-79 and completed the necessary requirements to be granted certification as a schools librarian on September 6, 1979 at Nicholls State University.

8. Upon obtaining her certification as a librarian, plaintiff applied for and obtained employment at J.B. Maitland Elementary School as a librarian in St. Mary Parish. She held that position for one year.

9. In 1980, plaintiff applied for a librarian's job with the Lafourche Parish School Board. She was hired for the 1980-81 school year and assigned to W.S. LaFargue Elementary School, a school in Lafourche Parish. The school consisted of grades kindergarten through second.

10. Plaintiff's primary job was to organize, maintain and administer the school's library. At the time she began work, that job was complicated as the school had recently added the second grade and this addition meant that plaintiff was responsible for adding all the second grade books to the existing library as well as adding and cataloging all the audio/visual aids for the second grade. Plaintiff made orderly transition of the additional books and audio/visual aids adding them to the card-catalog and the accession record, opening the library on November 1, 1980 for the children.

11. As a small part of her job, according to her job description, plaintiff was asked to plan and present story hours for the children. This activity was to introduce and promote reading and diversify the school day for the children and to acquaint them with the library.

12. During the time that plaintiff worked for the school system, the principal, her immediate superior, never stated to her that she was not performing her duties as a librarian according to her job description.

13. As a newcomer to the Lafourche Parish School Board, she received very little information or instructions from her immediate superior. She was also never evaluated by a fellow librarian, either in the first or second semester of employment, although evaluations are common and usually required for first year employees and requested by the plaintiff.

14. At the end of 1981, plaintiff was terminated allegedly because she did not communicate well in English. According to her job description, a minor part of her job required oral communication to students. Plaintiff alleges that defendant discriminated against her by denying her re-appointment for the 1981-82 school year because of her national origin, Asian (India).

EXHAUSTION OF REMEDIES

15. Plaintiff filed a charge of discrimination against defendants with the Equal Employment Opportunity Commission (hereinafter referred to as "EEOC") on August 11, 1981. The Right to Sue Letter was issued on December 9, 1982 by the U.S. Department of Justice. A determination was made by the EEOC on or about August 31, 1982 that there was reasonable cause to believe that the charge by plaintiff was true.

VIOLATION OF LAW

16. The acts of W.S. LaFargue Elementary School, the Lafourche Parish School Board and the Parish of Lafourche constitutes national origin discrimination within the meaning of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.

CAUSE OF ACTION

17. Defendants denial of re-appointment of plaintiff constitutes discrimination on the basis of national origin; a violation of plaintiff's rights under the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.

RELIEF

WHEREFORE, plaintiff prays that this Court:

a. Award to plaintiff back pay to compensate for discrimination and interest.

b. Award attorney's fees and costs.

c. Award reinstatement of plaintiff to her position as librarian at W.S. LaFargue Elementary School or a comparative job in the school system.

d. All general and equitable relief.

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AND THE PARISH OF LAFOURCHE
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